

A bill for an act

relating to economic development; providing for stimulation of the construction industry; streamlining and modifying conditions that apply to certain construction projects; providing investment tax credits and an historic structure rehabilitation credit; authorizing green energy revenue bonds; permitting local assessments for energy improvements by cities and counties; appropriating money; amending Minnesota Statutes 2008, sections 16C.16, by adding a subdivision; 429.011, by adding subdivisions; 429.021, subdivision 1; 429.031, subdivision 3; 469.176, subdivision 2, by adding a subdivision; Minnesota Statutes 2009 Supplement, sections 429.011, subdivision 2a; 469.153, subdivision 2; proposing coding for new law in Minnesota Statutes, chapters 116J; 290; 297I; 469.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

ARTICLE 1

CONSTRUCTION INDUSTRY STIMULUS

Section 1. Minnesota Statutes 2008, section 16C.16, is amended by adding a subdivision to read:

Subd. 13. **Actions related to stimulus projects.** This section applies to the construction of a stimulus project, as authorized in section 469.176, subdivision 8.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. Minnesota Statutes 2009 Supplement, section 429.011, subdivision 2a, is amended to read:

Subd. 2a. **Municipality; certain counties.** "Municipality" also includes the following:

(1) a county in the case of construction, reconstruction, or improvement of a county state-aid highway;

(2) a county in the case of construction, reconstruction, or improvement of a county highway as defined in section 160.02 including curbs and gutters and storm sewers;

(3) a county exercising its powers and duties under section 444.075, subdivision 1;

(4) a county for expenses not paid for under section 403.113, subdivision 3, paragraph (b), clause (3); ~~and~~

(5) a county in the case of the abatement of nuisances; and

(6) a county in the case of on-site energy conservation and renewable energy generation improvements.

Sec. 3. Minnesota Statutes 2008, section 429.011, is amended by adding a subdivision to read:

Subd. 2c. **Municipality, energy conservation and renewable energy improvements.** For purposes of construction, improvement, alteration, and reconstruction of an on-site energy conservation and renewable energy system, a municipality may provide the improvements through and impose special assessments upon the request of a port authority, economic development authority, industrial development authority, or housing and redevelopment authority.

Sec. 4. Minnesota Statutes 2008, section 429.011, is amended by adding a subdivision to read:

Subd. 17. **On-site energy conservation and renewable energy improvements.** "On-site energy conservation and renewable energy improvement" means any type of active or passive improvement, including insulation; windows or doors; heating, cooling, or other building systems; lighting systems; energy-related process or manufacturing changes; energy demand monitoring and regulation equipment; and any other type of device, improvement, or equipment installed in a building and its property and equipment for on-site renewable energy generation including, but not limited to, solar photovoltaics and solar thermal, as well as energy storage devices that may include mobile equipment charging capability, whether the devices, equipment, or improvements so installed are publicly or privately owned.

Sec. 5. Minnesota Statutes 2008, section 429.021, subdivision 1, is amended to read:

Subdivision 1. **Improvements authorized.** The council of a municipality shall have power to make the following improvements:

(1) To acquire, open, and widen any street, and to improve the same by constructing, reconstructing, and maintaining sidewalks, pavement, gutters, curbs, and vehicle parking

strips of any material, or by grading, graveling, oiling, or otherwise improving the same, including the beautification thereof and including storm sewers or other street drainage and connections from sewer, water, or similar mains to curb lines.

(2) To acquire, develop, construct, reconstruct, extend, and maintain storm and sanitary sewers and systems, including outlets, holding areas and ponds, treatment plants, pumps, lift stations, service connections, and other appurtenances of a sewer system, within and without the corporate limits.

(3) To construct, reconstruct, extend, and maintain steam heating mains.

(4) To install, replace, extend, and maintain street lights and street lighting systems and special lighting systems.

(5) To acquire, improve, construct, reconstruct, extend, and maintain water works systems, including mains, valves, hydrants, service connections, wells, pumps, reservoirs, tanks, treatment plants, and other appurtenances of a water works system, within and without the corporate limits.

(6) To acquire, improve and equip parks, open space areas, playgrounds, and recreational facilities within or without the corporate limits.

(7) To plant trees on streets and provide for their trimming, care, and removal.

(8) To abate nuisances and to drain swamps, marshes, and ponds on public or private property and to fill the same.

(9) To construct, reconstruct, extend, and maintain dikes and other flood control works.

(10) To construct, reconstruct, extend, and maintain retaining walls and area walls.

(11) To acquire, construct, reconstruct, improve, alter, extend, operate, maintain, and promote a pedestrian skyway system. Such improvement may be made upon a petition pursuant to section 429.031, subdivision 3.

(12) To acquire, construct, reconstruct, extend, operate, maintain, and promote underground pedestrian concourses.

(13) To acquire, construct, improve, alter, extend, operate, maintain, and promote public malls, plazas or courtyards.

(14) To construct, reconstruct, extend, and maintain district heating systems.

(15) To construct, reconstruct, alter, extend, operate, maintain, and promote fire protection systems in existing buildings, but only upon a petition pursuant to section 429.031, subdivision 3.

(16) To acquire, construct, reconstruct, improve, alter, extend, and maintain highway sound barriers.

(17) To improve, construct, reconstruct, extend, and maintain gas and electric distribution facilities owned by a municipal gas or electric utility.

(18) To purchase, install, and maintain signs, posts, and other markers for addressing related to the operation of enhanced 911 telephone service.

(19) To improve, construct, extend, and maintain facilities for Internet access and other communications purposes, if the council finds that:

(i) the facilities are necessary to make available Internet access or other communications services that are not and will not be available through other providers or the private market in the reasonably foreseeable future; and

(ii) the service to be provided by the facilities will not compete with service provided by private entities.

(20) To assess affected property owners for all or a portion of the costs agreed to with an electric utility, telecommunications carrier, or cable system operator to bury or alter a new or existing distribution system within the public right-of-way that exceeds the utility's design and construction standards, or those set by law, tariff, or franchise, but only upon petition under section 429.031, subdivision 3.

(21) To construct, reconstruct, improve, alter, and maintain on-site energy conservation and renewable energy improvements for buildings and property, but only upon a petition under section 429.031, subdivision 3. The activities under this clause may also be undertaken by a port authority, economic development authority, industrial development authority, or housing and redevelopment authority, and the municipality may act on the request of those entities in imposing special assessments.

Sec. 6. Minnesota Statutes 2008, section 429.031, subdivision 3, is amended to read:

Subd. 3. **Petition by all owners.** Whenever all owners of real property abutting upon any street named as the location of any improvement shall petition the council to construct the improvement and to assess the entire cost against their property, the council may, without a public hearing, adopt a resolution determining such fact and ordering the improvement. The validity of the resolution shall not be questioned by any taxpayer or property owner or the municipality unless an action for that purpose is commenced within 30 days after adoption of the resolution as provided in section 429.036. Nothing herein prevents any property owner from questioning the amount or validity of the special assessment against the owner's property pursuant to section 429.081. In the case of a petition for the municipality to own and install a fire protection system, a pedestrian skyway system, on-site energy conservation improvements, or on-site water contaminant improvements, the petition must contain or be accompanied

by an undertaking satisfactory to the city by the petitioner that the petitioner will grant the municipality the necessary property interest in the building to permit the city to enter upon the property and the building to construct, maintain, and operate the fire protection system, pedestrian skyway system, on-site energy conservation improvements, or on-site water contaminant improvements. In the case of a petition for the installation of a privately owned fire protection system, a privately owned pedestrian skyway system, privately owned on-site energy conservation improvements, or privately owned on-site water contaminant improvements, the petition shall contain the plans and specifications for the improvement, the estimated cost of the improvement and a statement indicating whether the city or the owner will contract for the construction of the improvement. If the owner is contracting for the construction of the improvement, the city shall not approve the petition until it has reviewed and approved the plans, specifications, and cost estimates contained in the petition. The construction cost financed under section 429.091 shall not exceed the amount of the cost estimate contained in the petition. In the case of a petition for the installation of a fire protection system, a pedestrian skyway system, on-site energy conservation improvements, or on-site water contaminant improvements, the petitioner may request abandonment of the improvement at any time after it has been ordered pursuant to subdivision 1 and before contracts have been awarded for the construction of the improvement under section 429.041, subdivision 2. If such a request is received, the city council shall abandon the proceedings but in such case the petitioner shall reimburse the city for any and all expenses incurred by the city in connection with the improvement.

Sec. 7. Minnesota Statutes 2009 Supplement, section 469.153, subdivision 2, is amended to read:

Subd. 2. **Project.** (a) "Project" means (1) any properties, real or personal, used or useful in connection with a revenue producing enterprise, or any combination of two or more such enterprises engaged or to be engaged in generating, transmitting, or distributing electricity, assembling, fabricating, manufacturing, mixing, processing, storing, warehousing, or distributing any products of agriculture, forestry, mining, or manufacture, or in research and development activity in this field, or in the manufacturing, creation, or production of intangible property, including any patent, copyright, formula, process, design, know-how, format, or other similar item; (2) any properties, real or personal, used or useful in the abatement or control of noise, air, or water pollution, or in the disposal of solid wastes, in connection with a revenue producing enterprise, or any combination of two or more such enterprises engaged or to be engaged in any business or industry; (3) any properties, real or personal, used or useful in connection with the

business of telephonic communications, conducted or to be conducted by a telephone company, including toll lines, poles, cables, switching, and other electronic equipment and administrative, data processing, garage, and research and development facilities; (4) any properties, real or personal, used or useful in connection with a district heating system, consisting of the use of one or more energy conversion facilities to produce hot water or steam for distribution to homes and businesses, including cogeneration facilities, distribution lines, service facilities, and retrofit facilities for modifying the user's heating or water system to use the heat energy converted from the steam or hot water.

(b) "Project" also includes any properties, real or personal, used or useful in connection with a revenue producing enterprise, or any combination of two or more such enterprises engaged in any business.

(c) "Project" also includes any properties, real or personal, used or useful for the promotion of tourism in the state. Properties may include hotels, motels, lodges, resorts, recreational facilities of the type that may be acquired under section 471.191, and related facilities.

(d) "Project" also includes any properties, real or personal, used or useful in connection with a revenue producing enterprise, whether or not operated for profit, engaged in providing health care services, including hospitals, nursing homes, and related medical facilities.

(e) "Project" does not include any property to be sold or to be affixed to or consumed in the production of property for sale, and does not include any housing facility to be rented or used as a permanent residence.

(f) "Project" also means the activities of any revenue producing enterprise involving the construction, fabrication, sale, purchase, or leasing of equipment or products to be used in the reduction of energy demand and in gathering, processing, generating, storing, transmitting, or distributing solar, wind, geothermal, biomass, agricultural or forestry energy crops, or other alternative energy sources for use by any person or any residential, commercial, industrial, or governmental entity in heating, cooling, or otherwise providing energy for a facility owned or operated by that person or entity.

(g) "Project" also includes any properties, real or personal, used or useful in connection with a county jail, county regional jail, community corrections facilities authorized by chapter 401, or other law enforcement facilities, the plans for which are approved by the commissioner of corrections; provided that the provisions of section 469.155, subdivisions 7 and 13, do not apply to those projects.

(h) "Project" also includes any real properties used or useful in furtherance of the purpose and policy of section 469.141.

(i) "Project" also includes related facilities as defined by section 471A.02, subdivision 11.

(j) "Project" also includes an undertaking to purchase the obligations of local governments located in whole or in part within the boundaries of the municipality that are issued or to be issued for public purposes.

(k) "Project" also includes any properties designated as a qualified green building and sustainable design project under section 469.1655.

Sec. 8. **[469.1655] QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.**

Subdivision 1. **Project designation and eligibility.** (a) A municipality or redevelopment agency issuing revenue bonds under sections 469.152 to 469.165 may designate the project for which the bonds are issued as a qualified green building and sustainable design project as provided in this section.

(b) The issuer must ensure that each designated project substantially:

(1) reduces consumption of electricity compared to conventional construction;

(2) reduces daily carbon dioxide emissions compared to energy generated from coal;

(3) increases the use of solar photovoltaic cells in this state; or

(4) increases the use of fuel cells to generate energy.

(c) Before designating a project under this section, the issuer must document in writing that the project will satisfy the eligibility criteria in this section.

(d) At least 75 percent of the square footage of commercial buildings that are part of the project must be registered with a recognized green building rating system, including Minnesota's sustainable building guidelines or the United States Green Building Council's LEED certification, or in the case of residential buildings, Minnesota GreenStar rating, and must be reasonably expected to receive the certification.

Subd. 2. **Applications.** An application for designation under this section must include a project proposal that describes the energy-efficiency, renewable energy, and sustainable design features of the project and demonstrates that the project satisfies the eligibility criteria in this section. The application must include a description of:

(1) the amount of electric consumption reduced as compared to conventional construction;

(2) the amount of carbon dioxide daily emissions reduced compared to energy generated from coal;

(3) the amount of the gross installed capacity of the project's solar photovoltaic capacity measured in megawatts; and

(4) the amount in megawatts of the project's energy generated by fuel cells.

Subd. 3. Use of bond financing. The project proposal must include a description of the bond financing that will be allocated for financing of one or more of the following:

(1) the purchase, construction, integration, or other use of energy-efficiency, renewable energy, and sustainable design features of the project; or

(2) compliance with certification standards cited under subdivision 1, paragraph (d).

EFFECTIVE DATE. This section is effective for bonds issued after June 30, 2010.

Sec. 9. Minnesota Statutes 2008, section 469.176, subdivision 2, is amended to read:

Subd. 2. **Excess increments.** (a) The authority shall annually determine the amount of excess increments for a district, if any. This determination must be based on the tax increment financing plan in effect on December 31 of the year and the increments and other revenues received as of December 31 of the year. The authority must spend or return the excess increments under paragraph (c) within nine months after the end of the year.

(b) For purposes of this subdivision, "excess increments" equals the excess of:

(1) total increments collected from the district since its certification, reduced by any excess increments paid under paragraph (c), clause (4), for a prior year, over

(2) the total costs authorized by the tax increment financing plan to be paid with increments from the district, reduced, but not below zero, by the sum of:

(i) the amounts of those authorized costs that have been paid from sources other than tax increments from the district;

(ii) revenues, other than tax increments from the district, that are dedicated for or otherwise required to be used to pay those authorized costs and that the authority has received and that are not included in item (i);

(iii) the amount of principal and interest obligations due on outstanding bonds after December 31 of the year and not prepaid under paragraph (c) in a prior year; and

(iv) increased by the sum of the transfers of increments made under section 469.1763, subdivision 6, to reduce deficits in other districts made by December 31 of the year.

(c) The authority shall use excess increment only to do one or more of the following:

(1) prepay any outstanding bonds;

(2) discharge the pledge of tax increment for any outstanding bonds;

(3) pay into an escrow account dedicated to the payment of any outstanding bonds; ~~or~~

(4) pay or reimburse eligible project costs for a stimulus project certified by the authority as defined in section 469.176, subdivision 8, paragraph (b); or

(5) return the excess amount to the county auditor who shall distribute the excess amount to the city or town, county, and school district in which the tax increment financing district is located in direct proportion to their respective local tax rates.

(d) For purposes of a district for which the request for certification was made prior to August 1, 1979, excess increments equal the amount of increments on hand on December 31, less the principal and interest obligations due on outstanding bonds or advances, qualifying under subdivision 1c, clauses (1), (2), (4), and (5), after December 31 of the year and not prepaid under paragraph (c).

(e) The county auditor must report to the commissioner of education the amount of any excess tax increment distributed to a school district within 30 days of the distribution.

(f) For purposes of this subdivision, "outstanding bonds" means bonds which are secured by increments from the district.

(g) The state auditor may exempt an authority from reporting the amounts calculated under this subdivision for a calendar year, if the authority certifies to the auditor in its report that the total amount authorized by the tax increment plan to be paid with increments from the district exceeds the sum of the total increments collected for the district for all years by 20 percent.

Sec. 10. Minnesota Statutes 2008, section 469.176, is amended by adding a subdivision to read:

Subd. 8. **Economic stimulus projects.** (a) In connection with a stimulus project, the authority may extend by ten years the duration limits in subdivision 1b, paragraph (a), for any district for which the request for certification was made after June 30, 2010, and before January 1, 2012, to pay expenditures relating to a stimulus project located within the district. Permitted expenditures in economic development districts will include office facilities during the duration of the economic stimulus project. The authority may reallocate excess funds from existing tax increment districts in connection with a stimulus project outside of the boundaries of the district between June 30, 2010, and before January 1, 2012.

(b) A "stimulus project" means any capital project, the construction of which commences after June 30, 2010, and before January 1, 2012, determined to create or retain jobs in the state, including construction jobs, by the governing body of the municipality in which the project is located.

Sec. 11. **EXTENSION OF CERTAIN ECONOMIC DEVELOPMENT-RELATED PERMITS.**

Notwithstanding any law, rule, or local ordinance or regulation to the contrary, the expiration date of a permit for an economic development project or subdivision approved under Minnesota Statutes, section 326B.121, subdivision 2, or Minnesota Statutes, sections 462.351 to 462.364, that has not expired before the effective date of this section is extended for one year beyond its original expiration date. The permit grantee shall notify the grantor in writing of the status of the economic development project or subdivision approved every 90 days from the effective date and no less than 90 days in advance of initiation of construction.

EFFECTIVE DATE. This section is effective the day following final enactment.

ARTICLE 2

SMALL BUSINESS INVESTMENT CREDIT

Section 1. **[116J.8737] SMALL BUSINESS INVESTMENT TAX CREDIT.**

Subdivision 1. Definitions. (a) For the purposes of this section, the following terms have the meanings given.

(b) "Qualified small business" means a business that satisfies all of the following conditions:

(1) the business has its headquarters in Minnesota;

(2) at least 51 percent of the business's employees are employed in Minnesota, and 51 percent of the business's total payroll is paid or incurred in the state;

(3) the business is engaged in, or is committed to engage in, innovation in Minnesota in one of the following:

(i) using proprietary technology to add value to a product, process, or service in a qualified high-technology field;

(ii) researching or developing a proprietary product, process, or service in a qualified high-technology field;

(iii) researching, developing, or producing a new proprietary technology for use in the fields of tourism, forestry, mining, or transportation; or

(iv) qualified green manufacturing;

(4) other than the activities specifically listed in clause (3), the business is not engaged in real estate development, insurance, banking, lending, lobbying, political consulting, information technology consulting, wholesale or retail trade, leisure, hospitality, transportation, construction, ethanol production from corn, or professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants;

- 11.1 (5) the business has fewer than 25 employees;
- 11.2 (6) if the business has five or more employees as measured on a full-time equivalent
11.3 basis, the business must pay its employees in excess of the first five annual wages at least
11.4 175 percent of the federal poverty guideline for the year for a family of four;
- 11.5 (7) the business has not been in operation for more than ten consecutive years;
- 11.6 (8) the business has not received more than \$4,000,000 in qualifying investments
11.7 that have qualified for and received tax credits under this section;
- 11.8 (9) the business is not a member of a unitary group that employs more than 100
11.9 employees; and
- 11.10 (10) the business has not previously received private equity investments of more
11.11 than \$2,000,000.
- 11.12 (c) "Qualified high-technology field" includes, but is not limited to, aerospace,
11.13 agricultural processing, alternative energy, environmental engineering, food technology,
11.14 cellulosic ethanol, information technology, materials science technology, nanotechnology,
11.15 telecommunications, biotechnology, medical device products, pharmaceuticals,
11.16 diagnostics, biologicals, and veterinary science.
- 11.17 (d) "Proprietary technology" means the technical innovations that are unique and
11.18 legally owned or licensed by a business and includes, without limitation, those innovations
11.19 that are patented, patent pending, a subject of trade secrets, or copyrighted.
- 11.20 (e) "Qualified green manufacturing" means a business whose primary business
11.21 activity is production of products, processes, methods, technologies, or services, excluding
11.22 consulting, intended to do one or more of the following:
- 11.23 (1) increase the use of energy from renewable sources, as defined in section
11.24 216B.1691;
- 11.25 (2) increase the energy efficiency of the electric utility-producing infrastructure
11.26 system or to increase energy conservation related to electricity or other utility use, as
11.27 provided in sections 216B.2401 and 216B.241;
- 11.28 (3) reduce greenhouse gas emissions, as defined in section 216H.01, subdivision 2,
11.29 or to mitigate greenhouse gas emissions or other waste products through, but not limited
11.30 to, carbon capture, storage, or sequestration;
- 11.31 (4) monitor, protect, restore, and preserve the quality of surface waters; and
- 11.32 (5) expand use of biofuels, including expanding the feasibility or reducing the cost
11.33 of producing biofuels or the types of equipment, machinery, and vehicles that can use
11.34 biofuels.

(f) "Qualified taxpayer" means an accredited investor, within the meaning of Regulation D of the Securities and Exchange Commission, Code of Federal Regulations, title 17, section 230.501(a), who:

(1) does not own, control, or hold power to vote 20 percent or more of the outstanding securities of the qualified small business in which the eligible investment is proposed; or

(2) does not receive more than 50 percent of the taxpayer's gross annual income from the qualified small business in which the eligible investment is proposed.

A member of the family of a taxpayer disqualified by this subdivision is not eligible for a credit under this section.

(g)(1) "Qualified angel investment network fund" means a pooled investment fund that:

(i) invests in qualified small businesses;

(ii) is organized as a pass-through entity; and

(iii) has at least three separate investors, all of whom are qualified taxpayers as defined in paragraph (f), and who own no more than 50 percent of the outstanding ownership interests in the fund; and

(2) for purposes of determining the number of investors and the ownership interest of an investor under this paragraph, the ownership interests of an investor include those of the investor's family, and any corporation, limited liability company, partnership, or trust in which the investor or the investor's family has a controlling equity interest or exercises management control. Investments in the fund may consist of equity investments or notes that pay interest or other fixed amounts, or any combination of both.

(h) "Qualified investment" means either a cash investment of a minimum of:

(1) \$10,000 in a calendar year by a qualified taxpayer; or

(2) \$50,000 in a calendar year by a qualified angel investment network fund.

The qualified investment in a qualified small business must be in exchange for common stock, a partnership or membership interest, preferred stock, debt with mandatory conversion to equity, or an equivalent ownership interest as determined by the commissioner.

(i) "Family" means a family member within the meaning of the Internal Revenue Code, section 267(c)(4).

Subd. 2. Certification of small businesses. (a) Businesses may apply to the commissioner for certification as a qualified small business. The application must be in the form and be made under the procedures specified by the commissioner, accompanied by an application fee of \$150. The application for certification must be made available on the department's Web site by August 1, 2010. Applications for subsequent years' certification

13.1 must be made available on the department's Web site by November 1 of the preceding
13.2 year. Application fees collected are appropriated to the commissioner to be used for
13.3 personnel and administrative expenses related to administering the program.

13.4 (b) A business seeking certification must submit an application for each taxable
13.5 year for which the business desires certification. If a qualified small business receives
13.6 a qualified investment for which tax credits are allocated, the business must annually
13.7 submit a certified small business report in the form required by the commissioner with
13.8 the required fee no later than February 1 for the two years subsequent to the last qualified
13.9 investment. Failure to file an annual report as required under this subdivision results in a
13.10 fine of \$500 and revocation of certification.

13.11 (c) The commissioner must maintain a list of businesses certified under this
13.12 subdivision and make the list accessible to the public on the department's Web site.

13.13 Subd. 3. **Certification of qualified taxpayers.** (a) Taxpayers may apply to the
13.14 commissioner for certification as a qualified taxpayer. The application must be in the
13.15 form and be made under the procedures specified by the commissioner, accompanied by
13.16 an application fee of \$350. The application for certification of qualified taxpayers must
13.17 be made available on the department's Web site by August 1, 2010. Applications for
13.18 subsequent years' certification must be made available on the department's Web site by
13.19 November 1 of the preceding year. Application fees are appropriated to the commissioner
13.20 for personnel and administrative expenses related to administering the program.

13.21 (b) A qualified taxpayer seeking certification must submit an application for each
13.22 taxable year in which the qualified taxpayer seeks certification. If a qualified taxpayer
13.23 receives tax credits under this section, a qualified taxpayer must submit an angel investor
13.24 annual report in the form required by the commissioner with the required fee no later than
13.25 February 1 of each year for two years subsequent to the last allocation of tax credits.
13.26 Failure to file an angel investor annual report as required under this subdivision results
13.27 in the revocation of tax credits. Once a qualified taxpayer has filed the required annual
13.28 reports and accompanying fees for two subsequent years following allocation of tax
13.29 credits and complied with all other requirements for that allocation, the tax credits are
13.30 no longer subject to revocation.

13.31 Subd. 4. **Certification of qualified angel investment network funds.** (a)
13.32 Angel investment network funds may apply to the commissioner of employment and
13.33 economic development for certification as a qualified angel investment network fund.
13.34 The application must be in the form and be made under the procedures specified by
13.35 the commissioner, accompanied by an application fee of \$1,000. The application for
13.36 certification of qualified angel investor network funds must be made available on the

14.1 department's Web site by August 1, 2010. Applications for subsequent years' certification
14.2 must be made available by November 1 of the preceding year. Application fees collected
14.3 are appropriated to the commissioner to be used for personnel and administrative expenses
14.4 related to administering the program.

14.5 (b) A qualified angel investment network fund seeking certification must submit an
14.6 application for each taxable year for which the angel investment network fund seeks
14.7 certification. If any member of a qualified angel investment network fund receives tax
14.8 credits under this section for qualified investments made by the fund, the qualified angel
14.9 investment network fund must annually submit an angel investor annual report in the
14.10 form required by the commissioner with the required fee no later than February 1 of
14.11 each year for two years subsequent to the last allocation of credits. Failure to file an
14.12 angel investor annual report as required under this subdivision results in revocation of
14.13 tax credits. Once a qualified angel investment network fund has filed the required annual
14.14 reports and accompanying fees for two subsequent years following allocation of tax
14.15 credits and complied with all other requirements for that allocation, the tax credits are
14.16 no longer subject to revocation.

14.17 Subd. 5. **Credit allowed.** (a) A qualified taxpayer or angel investor network fund is
14.18 allowed a credit for investment in a qualified small business in the amount determined
14.19 by the certification allocated by the commissioner against the tax imposed by chapter
14.20 290. The commissioner must not allocate more than \$10,000,000 in credits to qualified
14.21 taxpayers or angel investment network funds per taxable year for taxable years beginning
14.22 after December 31, 2009, and before January 1, 2012, and must not allocate more than
14.23 \$12,000,000 in credits per year for taxable years beginning after December 31, 2011. Any
14.24 portion of a taxable year's credits that is not allocated by the commissioner does not
14.25 cancel and may be carried forward to the subsequent taxable year until all credits have
14.26 been allocated. Applications for tax investment credits must be made available on the
14.27 department's Web site by September 1, 2010, and the department must begin accepting
14.28 applications by September 1, 2010. Applications for subsequent years must be made
14.29 available by November 1 of the preceding year.

14.30 (b) Tax investment credits must be allocated to qualified taxpayers or angel investor
14.31 network funds in the order that the tax credit request applications are filed with the
14.32 department. The investment specified in the application must be made within 60 days of
14.33 the allocation of the credits. If the investment is not made within 60 days, the credits are
14.34 deemed revoked. A qualified taxpayer or angel investor network fund that fails to invest
14.35 as specified in the application, within 60 days from allocation of the credits, must notify

the department of the failure to invest within five business days of the expiration of the 60-day investment period.

(c) All tax credit request applications filed with the department on the same day must be treated as having been filed contemporaneously. In the event that two or more qualified taxpayers or angel investment network funds file tax credit request applications on the same day, and the aggregate amount of credit allocation claims exceeds the aggregate limit of credit under this section or the lesser amount of credits that remain unallocated on that day, then the credits must be allocated among the qualified taxpayers or angel investment network funds who filed on that day on a pro rata basis with respect to the amounts claimed. The pro rata allocation for any one qualified taxpayer or angel investment network fund is the product obtained by multiplying a fraction, the numerator of which is the amount of the credit allocation claim filed on behalf of a qualified taxpayer and the denominator of which is the total of all credit allocation claims filed on behalf of all applicants on that day, by the amount of credits that remain unallocated on that day for the fiscal year.

(d) The commissioner must notify the commissioner of revenue of every credit allocated and every credit revoked under this section.

Subd. 6. **Annual reports.** (a) By February 1 of each year for two years subsequent to the last allocation of credits, qualified small businesses, qualified taxpayers, and qualified angel investment network funds must submit an annual report and a filing fee of \$100. All report fees collected are appropriated to the commissioner for personnel and administrative expense related to administering the program.

(b) Qualified small businesses must certify to the department in the form required by the commissioner that it satisfies the following requirements:

(1) the business has its headquarters in Minnesota;

(2) at least 51 percent of the business's employees are employed in Minnesota, and 51 percent of the business's total payroll is paid or incurred in the state;

(3) that the business is engaged in, or is committed to engage in, innovation in Minnesota as defined under subdivision 1; and

(4) that the business meets the payroll requirements in subdivision 1, paragraph (b), clause (6).

(c) Qualified taxpayers must certify to the department in the form required by the commissioner that the investor satisfies the following requirements:

(1) the taxpayer continues to meet the requirements of subdivision 1, paragraph (f); and

(2) that the taxpayer continues to remain invested in the qualified small business as required by section 290.0692, subdivision 3.

(d) Qualified angel investment network funds must certify to the department in the form required by the commissioner that the investor satisfies the following requirements:

(1) the taxpayer continues to meet the requirements of subdivision 1, paragraph (g); and

(2) that the angel investment network fund continues to remain invested in the qualified small business as required by section 290.0692, subdivision 3.

Subd. 7. **Rulemaking exception.** The commissioner's actions in establishing procedures and requirements and in making determinations and certifications to administer this section are not a rule for purposes of chapter 14, are not subject to the Administrative Procedure Act contained in chapter 14, and are not subject to section 14.386.

Subd. 8. **Report.** Beginning in 2011, the commissioner must annually report by March 15 to the chairs of the committees having jurisdiction over taxes and economic development in the senate and the house of representatives on the tax credits issued under this section. The report must include:

(1) the number and amount of the credits issued;

(2) the recipients of the credits;

(3) the number and type of each business certified as a qualified small business;

(4) to the extent determinable, the total amount of investment generated by these credits; and

(5) any other information relevant to evaluating the effect of these credits.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. [290.0692] SMALL BUSINESS INVESTMENT CREDIT; CREDIT ALLOWED; LIMITATIONS; HOLDING PERIOD; AND CARRYOVER.

Subdivision 1. **Credit allowed.** A qualified taxpayer is allowed a credit against the tax imposed under this chapter for investments made in the year in a qualified small business as defined under section 116J.8737. The credit equals 25 percent of the qualified taxpayer's investment in the business, but not to exceed the lesser of:

(1) the liability for tax under this chapter, including the applicable alternative minimum tax, but excluding the minimum fee under section 290.0922; and

(2) the amount of the certificate provided to the qualified taxpayer under section 116J.8737.

Subd. 2. **Limitations.** No taxpayer may receive more than \$125,000 in credits under this section in any one year.

Subd. 3. **Holding periods.** The credit is allowed only for investments for which a credit has been allocated by the commissioner of employment and economic development

under section 116J.8737. Any credit taken by a taxpayer must be repaid, and any unused credits must be canceled, if the investment in the qualified small business is not held for at least three years. The three-year holding period does not apply if:

(1) the investment by the qualified taxpayer becomes worthless before the end of the three-year period;

(2) 80 percent or more of the assets of the qualified small business is sold before the end of the three-year period;

(3) the qualified small business is sold before the end of the three-year period; or

(4) the qualified small business's common stock begins trading on a public exchange before the end of the three-year period.

Subd. 4. **Proportional credits.** Each pass-through entity must provide each investor a statement indicating the investor's share of the credit amount certified to the pass-through entity based on its share of the pass-through entity's assets at the time of the qualified investment.

Subd. 5. **Carryover.** If the amount of the credit under this subdivision for any taxable year exceeds the liability for tax, the excess is a credit carryover to each of the ten succeeding taxable years. The entire amount of the excess unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried. The amount of the unused credit that may be added under this subdivision may not exceed the taxpayer's liability for tax less the credit for the taxable year.

Subd. 6. **Transfer of credits.** Any taxpayer who has not had liability under this chapter for the immediate past three taxable years and does not have anticipated liability for the current taxable year may transfer the entirety of the credit to any natural person of net worth, as defined in the Code of Federal Regulations, title 17, section 230.501(a). No person is entitled to a refund for the interest created under this subdivision. Only the full credit for any one taxpayer may be transferred and the interest may be transferred only one time. A credit acquired by transfer is subject to the limitations prescribed in this section. Documentation of any credit acquired by transfer must be provided by the taxpayer in the form required by the commissioner.

Subd. 7. **Audit powers.** Notwithstanding the certification eligibility issued by the commissioner of employment and economic development under section 116J.8737, the commissioner may utilize any audit and examination powers under chapter 270C or 289A to the extent necessary to verify that the taxpayer is eligible for the credit and to assess for the amount of any improperly claimed credit.

EFFECTIVE DATE. This section is effective for investments made after July 1, 2010, for taxable years beginning after December 31, 2009, and only applies to investments for which a credit has been allocated.

ARTICLE 3

HISTORICAL STRUCTURE REHABILITATION CREDIT

Section 1. **[290.0681] CREDIT FOR HISTORIC STRUCTURE REHABILITATION.**

Subdivision 1. **Definitions.** (a) For purposes of this section, the terms in this subdivision have the meanings given them.

(b) "Certified historic structure" means a property located in Minnesota and listed individually on the National Register of Historic Places or a historic property designated by either a certified local government or a heritage preservation commission created under the National Historic Preservation Act of 1966 and whose designation is approved by the state historic preservation officer.

(c) "Eligible property" means a certified historic structure or a structure in a certified historic district that is offered or used for residential or business purposes.

(d) "Structure in a certified historic district" means a structure located in Minnesota that is certified by the State Historic Preservation Office as contributing to the historic significance of a certified historic district listed on the National Register of Historic Places or a local district that has been certified by the United States Department of the Interior.

Subd. 2. **Credit allowed.** A taxpayer who incurs costs for the rehabilitation of eligible property may take a credit against the tax imposed under this chapter in an amount equal to 25 percent of the total costs of rehabilitation. Costs of rehabilitation include, but are not limited to, qualified rehabilitation expenditures as defined under section 47(c)(2)(A) of the Internal Revenue Code, provided that the costs of rehabilitation must exceed 50 percent of the total basis in the property at the time the rehabilitation activity begins and the rehabilitation must meet standards consistent with the standards of the Secretary of the Interior for rehabilitation as determined by the State Historic Preservation Office of the Minnesota Historical Society.

Subd. 3. **Carryback and carryforward.** If the amount of the credit under subdivision 2 exceeds the tax liability under this chapter for the year in which the cost is incurred, the amount that exceeds the tax liability may be carried back to any of the three preceding taxable years or carried forward to each of the ten taxable years succeeding the taxable year in which the expense was incurred. The entire amount of the credit must

be carried to the earliest taxable year to which the amount may be carried. The unused portion of the credit must be carried to the following taxable year.

Subd. 4. Partnerships; multiple owners; transfers. (a) Credits granted to a partnership, a limited liability company taxed as a partnership, or multiple owners of property shall be passed through to the partners, members, or owners, respectively, pro rata or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method.

(b) Taxpayers eligible for credits may transfer, sell, or assign the credits in whole or part. Any assignee may use acquired credits to offset up to 100 percent of the taxes otherwise imposed by this chapter. The assignee shall perfect a transfer by notifying the Department of Revenue in writing within 30 calendar days following the effective date of the transfer in a form and manner as prescribed by the Department of Revenue. The proceeds of any sale or assignment of a credit is exempt from taxation under this chapter.

Subd. 5. Process. To claim the credit, the taxpayer must apply to the State Historic Preservation Office of the Minnesota Historical Society before a historic rehabilitation project begins. The State Historic Preservation Office shall determine the amount of eligible rehabilitation costs and whether the rehabilitation meets the standards of the United States Department of the Interior. The State Historic Preservation Office shall issue certificates verifying eligibility for and the amount of credit. The taxpayer shall attach the certificate to any income tax return on which the credit is claimed. The State Historic Preservation Office of the Minnesota Historical Society may collect fees for applications for the historic preservation tax credit. Fees shall be set at an amount that does not exceed the costs of administering the tax credit program.

Subd. 6. Mortgage certificates; credit for lending institutions. (a) The taxpayer may elect, in lieu of the credit otherwise allowed under this section, to receive a historic rehabilitation mortgage credit certificate.

(b) For purposes of this subdivision, a historic rehabilitation mortgage credit is a certificate that is issued to the taxpayer according to procedures prescribed by the State Historic Preservation Office with respect to the certified rehabilitation and meets the requirements of this paragraph. The face amount of the certificate must be equal to the credit that would be allowable under subdivision 2 to the taxpayer with respect to the rehabilitation. The certificate may only be transferred by the taxpayer to a lending institution, including a nondepository home mortgage lending institution, in connection with a loan:

(1) that is secured by the building with respect to which the credit is issued; and

(2) the proceeds of which may not be used for any purpose other than the acquisition or rehabilitation of the building.

(c) In exchange for the certificate, the lending institution must provide to the taxpayer an amount equal to the face amount of the certificate discounted by the amount by which the federal income tax liability of the lending institution is increased due to its use of the certificate in the manner provided in this section. That amount must be applied, as directed by the taxpayer, in whole or in part, to reduce:

(1) the principal amount of the loan;

(2) the rate of interest on the loan; or

(3) the taxpayer's cost of purchasing the building, but only in the case of a qualified historic home that is located in a poverty-impacted area as designated by the State Historic Preservation Office.

(d) The lending institution may take as a credit against the tax due under this chapter an amount equal to the amount specified in the certificate. If the amount of the discount retained by the lender exceeds the amount by which the lending institution's federal income tax liability is increased due to the use of a mortgage credit certificate, the excess shall be refunded to the borrower with interest at the rate prescribed by the State Historic Preservation Office. The lending institution may carry forward all unused credits under this subdivision until exhausted. Nothing in this subdivision requires a lending institution to accept a historic rehabilitation certificate from any person.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2009.

ARTICLE 4

MINNESOTA BUSINESS INVESTMENT COMPANY CREDIT

Section 1. **[116J.665] MINNESOTA BUSINESS INVESTMENT COMPANY CREDIT.**

Subdivision 1. Definitions. (a) For purposes of this section, the following terms have the meanings given.

(b) "Affiliate" means:

(1) any person who, directly or indirectly, beneficially owns, controls, or holds power to vote 15 percent or more of the outstanding voting securities or other voting ownership interest of a Minnesota business investment company or insurance company; or

21.1 (2) any person, 15 percent or more of whose outstanding voting securities or other
21.2 voting ownership interests are directly or indirectly beneficially owned, controlled, or held
21.3 with power to vote by a Minnesota business investment company or insurance company.

21.4 Notwithstanding this subdivision, an investment by a participating investor in a
21.5 Minnesota business investment company pursuant to an allocation of premium tax credits
21.6 under this section does not cause that Minnesota business investment company to become
21.7 an affiliate of that participating investor.

21.8 (c) "Allocation date" means the date on which credits under section 297I.23 are
21.9 allocated to the participating investors of a Minnesota business investment company
21.10 under this section.

21.11 (d) "Designated capital" means an amount of money that:

21.12 (1) is invested by a participating investor in a Minnesota business investment
21.13 company; and

21.14 (2) fully funds the purchase price of either or both participating investor's equity
21.15 interest in a Minnesota business investment company or a qualified debt instrument issued
21.16 by a Minnesota business investment company.

21.17 (e) "Minnesota business investment company" means a partnership, corporation,
21.18 trust, or limited liability company, organized on a for-profit basis, that:

21.19 (1) has its principal office located or is headquartered in Minnesota;

21.20 (2) has as its primary business activity the investment of cash in qualified businesses;
21.21 and

21.22 (3) is certified by the Department of Employment and Economic Development as
21.23 meeting the criteria in this section.

21.24 (f) "Participating investor" means any insurance company as defined in section
21.25 60A.02, subdivision 4, excluding health maintenance organizations, that contributes
21.26 designated capital pursuant to this section.

21.27 (g) "Person" means any natural person or entity, including, but not limited to, a
21.28 corporation, general or limited partnership, trust, or limited liability company.

21.29 (h)(1) "Qualified business" means a business that is independently owned and
21.30 operated and meets all of the following requirements:

21.31 (i) it is headquartered in Minnesota, its principal business operations are located in
21.32 this state, and at least 80 percent of its employees are located in Minnesota;

21.33 (ii) it has no more than 100 employees;

21.34 (iii) it is not engaged in:

21.35 (A) professional services provided by accountants, doctors, or lawyers;

21.36 (B) banking or lending;

- 22.1 (C) real estate development;
22.2 (D) insurance;
22.3 (E) oil and gas exploration;
22.4 (F) direct gambling activities;
22.5 (G) retail sales; or
22.6 (H) making loans to or investments in a Minnesota business investment company
22.7 or an affiliate; and
22.8 (iv) it is not a franchise of and has no financial relationship with a Minnesota business
22.9 investment company or any affiliate of a Minnesota business investment company prior to
22.10 a Minnesota business investment company's first qualified investment in the business;
22.11 (2) a business classified as a qualified business at the time of the first qualified
22.12 investment in the business remains classified as a qualified business and may receive
22.13 continuing qualified investments from any Minnesota business investment company.
22.14 Continuing investments constitute qualified investments even though the business may not
22.15 meet the definition of a qualified business at the time of the continuing investments.
22.16 (i) "Qualified debt instrument" means a debt instrument issued by a Minnesota
22.17 business investment company which meets all of the following criteria:
22.18 (1) it is issued at par value or a premium; and
22.19 (2) it has an original maturity date of at least four years from the date of issuance, and
22.20 a repayment schedule that is not faster than a level principal amortization over four years.
22.21 (j) "Qualified distribution" means any distribution or payment made by a Minnesota
22.22 business investment company in connection with any of the following:
22.23 (1) costs and expenses of forming, syndicating, and organizing the Minnesota
22.24 business investment company, including fees paid for professional services, and the costs
22.25 of financing and insuring the obligations of a Minnesota business investment company,
22.26 provided no payment is made to a participating investor;
22.27 (2) an annual management fee not to exceed one percent of designated capital on
22.28 an annual basis to offset the costs and expenses of managing and operating a Minnesota
22.29 business investment company;
22.30 (3) reasonable and necessary fees in accordance with industry custom for ongoing
22.31 professional services, including, but not limited to, legal and accounting services related
22.32 to the operation of a Minnesota business investment company, not including lobbying or
22.33 governmental relations;
22.34 (4) any increase or projected increase in federal or state taxes, including penalties
22.35 and related interest of the equity owners of a Minnesota business investment company
22.36 resulting from the earnings or other tax liability of a Minnesota business investment

company to the extent that the increase is related to the ownership, management, or operation of a Minnesota business investment company.

(5) Payments of principal and interest to holders of qualified debt instruments issued by a Minnesota business investment company may be made without restriction whatsoever.

(k) "Qualified investment" means the investment of money by a Minnesota business investment company in a qualified business for the purchase of any debt, debt participation, equity, or hybrid security of any nature and description whatsoever, including a debt instrument or security that has the characteristics of debt but that provides for conversion into equity or equity participation instruments such as options or warrants. Any repayment of a qualified investment prior to one year from the date of issuance shall result in the amount of the qualified investment being reduced by 50 percent for purposes of the cumulative investment requirement in subdivision 8, paragraph (d).

(l) "State premium tax liability" means any liability incurred by an insurance company under chapter 297I or in the case of a repeal or a rate reduction by the state of the liability imposed by chapter 297I, any other tax liability imposed upon an insurance company by the state, other than the tax imposed on taxpayers under section 290.05.

Subd. 2. **Certification.** (a) The department must provide a standardized format for applying for the business investment credit under section 297I.23, and for certification as a Minnesota business investment company.

(b) An applicant for certification as a Minnesota business investment company is required to:

(1) file an application with the department that includes, without limitation, a statement that the applicant has read and understands the requirements of this section;

(2) pay a nonrefundable application fee of \$7,500 at the time of filing the application;

(3) submit as part of its application an audited balance sheet that contains an unqualified opinion of an independent certified public accountant issued not more than 35 days before the application date that states that the applicant has an equity capitalization of \$500,000 or more in the form of unencumbered cash, marketable securities, or other liquid assets; and

(4) have at least two principals or persons, at least one of which is primarily located in Minnesota, employed or engaged to manage the funds who each have a minimum of five years of money management experience in the venture capital or business industry.

(c) The department may certify partnerships, corporations, trusts, or limited liability companies, organized on a for-profit basis, which submit an application to be designated as a Minnesota business investment company if the applicant is located, headquartered, and

licensed or registered to conduct business in Minnesota, has as its primary business activity the investment of cash in qualified businesses, and meets the other criteria in this section.

(d) The department must review the organizational documents of each applicant for certification and the business history of each applicant and determine whether the applicant has satisfied the requirements of this section.

(e) Within 45 days after the receipt of an application, the department must issue the certification or refuse the certification and communicate in detail to the applicant the grounds for refusal, including suggestions for the removal of such grounds.

(f) The department must begin accepting applications to become a Minnesota business investment company as defined under section 297I.23 by August 1, 2010.

(g) All certification fees collected by the department under this section are appropriated to the commissioner to be used for personnel and administrative expenses related to administering the program.

Subd. 3. **Requirements.** (a) A participating investor or affiliate of a participating investor must not, directly or indirectly:

(1) beneficially own, whether through rights, options, convertible interest, or otherwise, 15 percent or more of the voting securities or other voting ownership interest of a Minnesota business investment company;

(2) manage a Minnesota business investment company; or

(3) control the direction of investments for a Minnesota business investment company.

(b) A Minnesota business investment company may obtain one or more guaranties, indemnities, bonds, insurance policies, or other payment undertakings for the benefit of its participating investors from any entity, except that in no case can more than one participating investor of a Minnesota business investment company on an aggregate basis with all affiliates of the participating investor be entitled to provide the guaranties, indemnities, bonds, insurance policies, or other payment undertakings in favor of the participating investors of a Minnesota business investment company and its affiliates in this state.

(c) This subdivision does not preclude a participating investor, insurance company, or other party from exercising its legal rights and remedies, including, without limitation, interim management of a Minnesota business investment company, in the event that a Minnesota business investment company is in default of its statutory obligations or its contractual obligations to the participating investor, insurance company, or other party, or from monitoring a Minnesota business investment company to ensure its compliance with this section or disallowing any investments that have not been approved by the department.

(d) The department may contract with an independent third party to review, investigate, and certify that the applications comply with this section.

Subd. 4. Aggregate limitations on investment tax credits; allocation. (a) The aggregate amount of investment tax credits to be allocated to all participating investors of Minnesota business investment companies under this section shall not exceed \$100,000,000. No Minnesota business investment company, on an aggregate basis with its affiliates, may file credit allocation claims that exceed \$100,000,000.

(b) Credits must be allocated to participating investors in the order that the credit allocation claims are filed with the department, provided that all credit allocation claims filed with the department on the same day must be treated as having been filed contemporaneously. Any credit allocation claims filed with the department prior to the initial credit allocation claim filing date are deemed to have been filed on the initial credit allocation claim filing date. The department must set the initial credit allocation claim filing date not less than 120 days and not greater than 150 days after the department begins accepting applications for certification.

(c) In the event that two or more Minnesota business investment companies file credit allocation claims with the department on behalf of their respective participating investors on the same day, and the aggregate amount of credit allocation claims exceeds the aggregate limit of investment tax credits under this section or the lesser amount of credits that remain unallocated on that day, then the department must allocate the credits among the participating investors who filed on that day on a pro rata basis with respect to the amounts claimed. The pro rata allocation for any one participating investor is the product obtained by multiplying a fraction, the numerator of which is the amount of the credit allocation claim filed on behalf of a participating investor and the denominator of which is the total of all credit allocation claims filed on behalf of all participating investors on that day, by the aggregate limit of credits under this section or the lesser amount of credits that remain unallocated on that day.

(d) Within ten business days after the department receives a credit allocation claim filed by a Minnesota business investment company on behalf of one or more of its participating investors, the department must notify the Minnesota business investment company of the amount of credits allocated to each of the participating investors of that Minnesota business investment company. In the event a Minnesota business investment company does not receive an investment of designated capital from each participating investor required to earn the amount of credits allocated to the participating investor within ten business days of the Minnesota business investment company's receipt of notice of allocation, then it shall notify the department on or before the next business day, and

the credits allocated to the participating investor of the Minnesota business investment company are forfeited. The department must then reallocate those forfeited credits among the participating investors of the other Minnesota business investment companies on a pro rata basis with respect to the credit allocation claims filed on behalf of the participating investors. The commissioner is authorized, but not required, to levy a fine of not more than \$50,000 on any participating investor that does not invest the full amount of designated capital required to fund the credits allocated to it by the department in accordance with the credit allocation claim filed on its behalf.

(e) No participating investor, on an aggregate basis with its affiliates, may file an allocation claim for more than 25 percent of the maximum amount of investment tax credits authorized under this subdivision, regardless of whether the claim is made in connection with one or more Minnesota business investment companies.

Subd. 5. **Requirements for continuance of certification.** (a) To maintain its certification, a Minnesota business investment company must make qualified investments as follows:

(1) within two years after the allocation date, a Minnesota business investment company must invest an amount equal to at least 35 percent of its designated capital in qualified investments; and

(2) within three years after the allocation date, a Minnesota business investment company must invest an amount equal to at least 50 percent of its designated capital in qualified investments.

(b) Prior to making a proposed qualified investment in a specific business, a Minnesota business investment company must request from the department a written determination that the proposed investment qualifies as a qualified investment in a qualified business. The department must notify a Minnesota business investment company within ten business days from the receipt of a request of its determination and an explanation thereof. If the department fails to notify the Minnesota business investment company of its determination within the ten-business-day period, the proposed investment is deemed a qualified investment in a qualified business. If the department determines that the proposed investment does not meet the definition of a qualified investment or qualified business, or both, the department may nevertheless consider the proposed investment a qualified investment and, if necessary, the business a qualified business, if the department determines that the proposed investment furthers state economic development.

(c) All designated capital not invested in qualified investments by a Minnesota business investment company shall be held or invested in such manner as the Minnesota business investment company, in its discretion, deems appropriate. Designated capital

27.1 and proceeds of designated capital returned to a Minnesota business investment company
27.2 after being originally invested in qualified investments may be invested again in qualified
27.3 investments and the investment shall count toward the requirements of paragraph (a) with
27.4 respect to making investments of designated capital in qualified investments.

27.5 (d) If, within four years after its allocation date, a Minnesota business investment
27.6 company has not invested at least 60 percent of its designated capital in qualified
27.7 investments, the Minnesota business investment company must not be permitted to pay
27.8 management fees.

27.9 (e) If, within six years after its allocation date, a Minnesota business investment
27.10 company has not invested at least 100 percent of its designated capital in qualified
27.11 investments, the Minnesota business investment company must not be permitted to pay
27.12 management fees.

27.13 (f) A Minnesota business investment company may not invest more than 15 percent
27.14 of its designated capital in any one qualified business without the specific approval
27.15 of the department.

27.16 (g) For purposes of calculating the investment percentage thresholds of paragraph
27.17 (a), the cumulative amount of all qualified investments made by a Minnesota business
27.18 investment company from the allocation date must be considered.

27.19 Subd. 6. **Minnesota business investment company reporting requirements.** (a)
27.20 Each Minnesota business investment company must report the following to the department
27.21 in the form designated by the commissioner:

27.22 (1) as soon as practicable after the receipt of designated capital:

27.23 (i) the name of each participating investor from which the designated capital was
27.24 received, including such participating investor's insurance tax identification number;

27.25 (ii) the amount of each participating investor's investment of designated capital; and

27.26 (iii) the date on which the designated capital was received;

27.27 (2) on an annual basis, on or before January 31 of each year:

27.28 (i) the amount of the Minnesota business investment company's designated capital
27.29 that remains to be invested in qualified investments at the end of the immediately
27.30 preceding taxable year;

27.31 (ii) whether or not the Minnesota business investment company has invested more
27.32 than 15 percent of its total designated capital in any one business;

27.33 (iii) all qualified investments that the Minnesota business investment company has
27.34 made in the previous taxable year, including the number of employees of each qualified
27.35 business in which it has made investments at the time of such investment, and as of
27.36 December 1 of the preceding taxable year; and

(iv) for any qualified business where the Minnesota business investment company no longer has an investment, the Minnesota business investment company must provide employment figures for that company as of the last day before the investment was terminated;

(3) other information that the department may reasonably request that helps the department ascertain the impact of the Minnesota business investment company program both directly and indirectly on the economy of the state including, but not limited to, the number of jobs created by qualified businesses that have received qualified investments;

(4) within 90 days of the close of its fiscal year, annual audited financial statements of the Minnesota business investment company, which must include the opinion of an independent certified public accountant; and

(5) an agreed upon procedures report or equivalent regarding the operations of the Minnesota business investment company.

(b) A Minnesota business investment company must pay to the department an annual, nonrefundable certification fee of \$5,000 on or before April 1, or \$10,000 if later. No annual certification fee is required if the payment date for the fee is within six months of the date a Minnesota business investment company is first certified by the department.

(c) Upon satisfying the requirements of subdivision 5, paragraph (a), clause (2), a Minnesota business investment company must provide the notice to the department and the department shall, within 60 days of receipt of the notice, either confirm that the Minnesota business investment company has satisfied the requirements of subdivision 5, paragraph (a), clause (2), as of such date or provide notice of noncompliance and an explanation of any existing deficiencies. If the department does not provide notification within 60 days, the Minnesota business investment company is deemed to have met the requirements of subdivision 5, paragraph (a), clause (2).

Subd. 7. **Distributions.** (a) A Minnesota business investment company may make qualified distributions at any time. In order for a Minnesota business investment company to make a distribution other than a qualified distribution to its equity holders, the cumulative amount of all qualified investments of the Minnesota business investment company must equal or exceed 100 percent of its designated capital.

(b) The state shall receive ten percent of the net profits on qualified investments. For purposes of this paragraph, "net profits on qualified investments" means the amount of money returned to the Minnesota business investment company in exchange for or repayment of its qualified investments in qualified businesses in excess of the amount invested by the Minnesota business investment company in qualified investments. The net profits on qualified investments are the aggregate of all of the Minnesota business

investment company's qualified investments where gains on qualified investments are netted against losses on qualified investments.

Subd. 8. Decertification. (a) The department shall conduct an annual review of each Minnesota business investment company to determine if a Minnesota business investment company is abiding by the requirements of certification and to ensure that no investment has been made in violation of this section. The cost of the annual review must be paid by each Minnesota business investment company according to a reasonable fee schedule adopted by the department.

(b) Any material violation of this section, including any material misrepresentation made to the department in connection with the application process, is grounds for decertification of a Minnesota business investment company and the disallowance of credits under section 297I.23, provided that in all instances the department shall provide notice to the Minnesota business investment company of the grounds of the proposed decertification and the opportunity to cure the violation before any decertification becomes effective.

(c) The department shall send written notice of decertification to the commissioner of revenue and to the address of each participating investor whose tax credit may be subject to recapture or forfeiture, using the address shown on the last filing submitted to the department.

(d) Once a Minnesota business investment company has invested an amount cumulatively equal to 100 percent of its designated capital in qualified investments, provided that the Minnesota business investment company has met all other requirements under this section as of such date, the Minnesota business investment company is no longer subject to regulation by the department or the reporting requirements under subdivision 6. Upon receiving certification by a Minnesota business investment company that it has invested an amount equal to 100 percent of its designated capital, the department shall notify a Minnesota business investment company within 60 days that it has or has not met the requirements, with a reason for the determination if it has not. If the department does not provide notification of deregulation within 60 days, the Minnesota business investment company is deemed to have met the requirements and is deemed to no longer be subject to regulation by the department.

Subd. 9. Registration requirements. All investments by participating investors for which tax credits are awarded under this section must be registered or specifically exempt from registration.

Subd. 10. Rulemaking exception. The commissioner's actions in establishing procedures and requirements and in making determinations and certifications to administer

this section are not a rule for purposes of chapter 14, are not subject to the Administrative Procedure Act contained in chapter 14, and are not subject to section 14.386.

Subd. 11. **Reports to governor and legislature.** The department shall make an annual report by March 15 of each year to the governor and the legislative chairs and ranking minority members of the committees and divisions having jurisdiction over taxes and economic development. The report must include:

(1) the number of Minnesota business investment companies holding designated capital;

(2) the amount of designated capital invested in each Minnesota business investment company;

(3) the cumulative amount that each Minnesota business investment company has invested as of January 1, 2011, and the cumulative total each year thereafter;

(4) the cumulative amount of follow-on capital that the investments of each Minnesota business investment company have created in terms of capital invested in qualified businesses at the same time or subsequent to investments made by a Minnesota business investment company in such businesses by sources other than Minnesota business investment companies;

(5) the total amount of investment tax credits applied under this section for each year;

(6) the performance of each Minnesota business investment company with regard to the requirements for continued certification;

(7) the classification of the companies in which each Minnesota business investment company has invested according to industrial sector and size of company;

(8) the gross number of jobs created by investments made by each Minnesota business investment company and the number of jobs retained;

(9) the location of the companies in which each Minnesota business investment company has invested;

(10) those Minnesota business investment companies that have been decertified, including the reasons for decertification; and

(11) other related information as necessary to evaluate the effect of this section on economic development.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. [297L.23] MINNESOTA BUSINESS INVESTMENT COMPANY CREDIT.

Subdivision 1. **Credit allowed.** (a) A participating investor as defined under section 116J.665, subdivision 1, is allowed a credit against the tax imposed in this chapter equal to 80 percent of the participating investor's investment of designated capital in a Minnesota

business investment company. Beginning January 1, 2014, in tax years 2014 to 2017, a participating investor may claim an amount equal to 20 percent of the participating investor's investment of designated capital.

(b) The credit for any taxable year must not exceed the liability for tax. If the amount of the credit determined under this section for any taxable year exceeds the liability for tax, the excess is an investment tax credit carryover to each of the succeeding taxable years and must be carried forward to each succeeding taxable year until the entire carryforward has been credited against the participating investor's liability for tax under this chapter. Credits may be used in connection with both estimated and return payments of a participating investor's state premium tax liability.

(c) A participating investor claiming a credit under this section is not required to pay any additional retaliatory tax levied by Minnesota as a result of claiming the credit.

(d) A participating investor is not required to reduce the amount of tax pursuant to the state premium tax liability included by the participating investor in connection with ratemaking for any insurance contract written in this state because of a reduction in the participating investor's tax liability based on the tax credit allowed under this section.

(e) Decertification of a Minnesota business investment company under section 116J.665 may result in the disallowance and the recapture of the credit allowed under this section. The amount disallowed and recaptured must be assessed as follows:

(1) decertification of a Minnesota business investment company within two years of the allocation date of tax credits and prior to meeting the requirements of section 116J.665, subdivision 5, paragraph (a), clause (1), shall result in the disallowance of all of the credits allowed under this section;

(2) decertification of a Minnesota business investment company after two years of the allocation date of tax credits, but prior to meeting the requirements of section 116J.665, subdivision 5, paragraph (a), clause (1), results in the disallowance of one-half of all the credits allowed under this section; and

(3) decertification of Minnesota business investment company that has already met the requirements of section 116J.665, subdivision 5, paragraph (a), clause (1), does not cause the disallowance of any credits allowed under this section nor the recapture of any portion of the credits that was previously taken.

Subd. 2. **Transfers.** A participating investor must not transfer, agree to transfer, sell, or agree to sell the credit under this section until 180 days from the date on which the participating investor invested designated capital. After 180 days from the date of investment, a participating investor, or subsequent transferee, may transfer credits to another person who is subject to tax and must notify the department in the form prescribed

32.1 by the commissioner within 30 days of the transfer. A person must not transfer a credit
32.2 more than once in a 12-month period. No person is entitled to a refund for the interest
32.3 created under this subdivision. A credit acquired by transfer is subject to the limitations
32.4 prescribed in this section. Any transfer or sale of the credits does not affect the time
32.5 schedule for claiming the credit. Any tax credits recaptured under this section remain the
32.6 liability of the participating investor that actually applied the credit towards its tax liability.

32.7 Subd. 3. **Repayment of tax benefits received.** (a) Decertification of a Minnesota
32.8 small business investment company or revocation of credits under section 116J.665,
32.9 results in the disallowance to certified investors of any credits for that tax year or future
32.10 tax years and the participating investor is required to repay any credits claimed for the
32.11 previous year. Repayment must be made within 60 days of the decertification or the
32.12 revocation of the certification.

32.13 (b) The provisions of chapters 270C and 297I relating to audit, assessment, refund,
32.14 collection, and appeals are applicable to the credits claimed and repayment required under
32.15 this section. The commissioner may impose civil penalties as provided in section 297I.85,
32.16 and additional tax and penalties are subject to interest at the rate provided in section
32.17 270C.40, from the date payment was due.

32.18 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
32.19 December 31, 2010.

APPENDIX
Article locations in s2167-2

ARTICLE 1 CONSTRUCTION INDUSTRY STIMULUS Page.Ln 1.13

ARTICLE 2 SMALL BUSINESS INVESTMENT CREDIT Page.Ln 10.10

ARTICLE 3 HISTORICAL STRUCTURE REHABILITATION CREDIT Page.Ln 18.4

ARTICLE 4 MINNESOTA BUSINESS INVESTMENT COMPANY CREDIT Page.Ln 20.23